

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28558 of 2015

Arising Out of PS.Case No. -128 Year- 2015 Thana -KISHANGANJ District- KISANGANJ

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Arun Kant Mahanto @ Arun Kant Mahto, son of Late Mahendra Nath Mohanto,
resident of village-Titpukhur, P.S.-Karandighi, District-Uttar Dinajpur (W.B.)

.... Petitioner

Versus

1. The State of Bihar
2. Bharat Bhushan Gupta, District Manager, Bihar State Food & Civil Supplies Corporation Limited, Kishanganj.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. B.P Pandey, Senior Advocate

Mr. Radha Mohan Singh, Advocate

For the Opposite Party No.1 : Mr. M. Rab, APP

For the Opposite Party No. 2 : Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 14-07-2015

By way of this petition under Section 482 of the Code of Criminal Procedure, 1973 (For short 'the Code'), petitioner Arun Kant Mahanto @ Arun Kant Mahto has assailed the condition imposed in the order dated 02.06.2015 passed by the learned District & Sessions Judge, Kishanganj in Anticipatory Bail Petition No. 150 of 2015 arising out of Kishanganj P.S. Case No. 128 of 2015 registered for the offences punishable under Sections 406 and

420 of the Indian Penal Code whereby the anticipatory bail was granted to the petitioner.

2. The prosecution case, according to one Bharat Bhushan Gupta, District Manager, the Bihar State Food and Civil Supplies (For short 'the SFC') Kishanganj, is that the petitioner is a rice miller who entered into an agreement with the SFC for milling of paddy for Kharif Marketing Season 2012-13 and failed to deliver the entire quantity of rice at the godown of Food Corporation of India (For short 'the FCI). It is alleged that the petitioner procured 14169.00 quintals of paddy, against which rice to the extent of 9493.23 quintals was supposed to be delivered at the godown of the FCI. However, till 31.12.2013 only 5659.93 quintals of rice was delivered and the balance 3833.30 quintals of rice has been embezzled by the petitioner, value thereof comes to Rs. 8301242.00/- as per the rate of the SFC, i.e., Rs. 2165.56 per quintal. It is further alleged that the petitioner has deposited only Rs. 2.00 Lacs against the aforesaid amount outstanding of Rs. 8301242.00/- for which a certificate case being Certificate Case No. 05 of 2014-15 has also been instituted. As such, the petitioner is alleged to have embezzled Rs. 20408.73 quintals of rice.

3. On receipt of the aforesaid written report submitted by the informant, the officer-in-charge of Kishanganj Police Station

registered Kishanganj P.S. Case No. 128 of 2015 on 18.04.2015 under Sections 406 and 420 of the Indian Penal Code against the petitioner and handed over investigation of the case to a Sub-Inspector of Police, Subodh Kumar Gupta.

4. Apprehending his arrest in the aforesaid police case, the petitioner filed an application in the court of Sessions Judge, Kishanganj under Section 438 of the Code seeking bail. After hearing the parties and perusing the record, the learned Sessions Judge, Kishanganj granted anticipatory bail to the petitioner vide order dated 02.06.2015. The operative part of the order reads as under:-

“Perused the F.I.R. it appears that the informant Corporate had entered in the some agreement with the petitioner and during that agreement transactions, petitioner has perhaps not delivered as per the agreement.

Keeping in view that the petitioner has volunteered to pay the certificate due, his anticipatory bail prayer is allowed and in the event of his arrest or surrender before the learned court below, within one month from this order, he shall be released on bail on his furnishing bail bond of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of the learned court below, subject to the condition as laid down u/s 438(2) Cr.P.C. and also with condition that the petitioner will pay a sum of Rs. 20,00000/- at



the time of furnishing bail bond and the bail bond will be accepted provisionally and the petitioner will surrender before the court again after 15 days with another 20,00000/- deposit and once again petitioner's bail bond will be extended provisionally for 15 days and petitioner will again deposit Rs. 20,00000/- and the petitioner's bail bond will again be extended provisionally and when the petitioner will deposit the rest amount of Rs. 21,0,1242/- petitioner's bail bond will be accepted finally. However this deposit shall be always unconditional and this deposit will be made with the Certificate Officer, Kishanganj and the evidence of deposit with affidavit will be filed before the Court below. It is made clear that the deposit of the certificate dues in 4 instalments as stated above will not prejudice the petitioner's defence in the present criminal case and petitioner will be at liberty to raise all the possible defences, if any available to him in spite of the deposit as per this order. If the petitioner fails to pay as per the condition stated above, he will be taken into custody forthwith. Every time he will have to surrender in person before the Court with the evidence of further payment."

5. Mr. Bibhuti Prasad Pandey, learned Senior Counsel appearing for the petitioner submitted that the conditions imposed by the learned Sessions Judge while granting anticipatory bail to the petitioner are not only onerous but also unreasonable. It amounts to putting a fetter on the order granting anticipatory bail as the

petitioner is unable to satisfy the condition which is beyond his means and powers. It has further been contended that the petitioner never volunteered before the learned Sessions Judge to pay the dues claimed in the certificate proceeding instituted by the SFC in the manner indicated in the impugned order. According to him, the learned Sessions Judge while dealing with the application for anticipatory bail had no jurisdiction to impose such condition.

6. A similar question came up for consideration before this Court in **Cr. Misc. No. 28161 of 2015 (Rajesh Biyani Vs. State of Bihar & Another)**. I have allowed the said application today itself giving reasons in detail for my decision. In that case the petitioner was granted anticipatory bail in Kishanganj P.S. Case No. 117 of 2015 by the learned Sessions Judge, Kishanganj subject to payment of Rs. 4,36,96,330/- in six instalments.

7. **For the reasons recorded in my order dated 14.07.2015 passed in Cr. Misc. No. 28161 of 2015, this application is allowed and the impugned order dated 02.06.2015 passed by the learned District & Sessions Judge, Kishanganj in Anticipatory Bail Petition No. 150 of 2015 arising out of Kishanganj P.S. Case No. 128 of 2015 is remanded to the learned District & Sessions Judge, Kishanganj to consider the prayer for anticipatory bail of the petitioner afresh in accordance with law,**

taking into consideration the facts and circumstances of the case including the nature of the offence alleged. The learned District & Sessions Judge is requested to dispose of the aforesaid ABP No. 150 of 2015 giving reason for his decision as expeditiously as possible, preferably within three weeks from the date of receipt/communication of the order.

(Ashwani Kumar Singh, J.)

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